Supreme Court, U.S.
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No. 93-228

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

THE TEXAS FRUIT PALACE, INC.,
Petitioner,

v.

THE CITY OF PALESTINE,
Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Twelfth Supreme Judicial District Of Texas

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED

1. Respondent does not agree that the Question Presented by Petitioner is actually presented by the case at bar. Such Question, as formulated by Petitioner, is as follows:

> "Absent Congressional authorization, can a state (or a political subdivision thereof) condemn property in support of a function delegated exclusively to the federal government in the Constitution of the United States - e.g. the postal function."

LIST OF ALL PARTIES

The parties at interest are The Texas Fruit Palace, Inc., (Fruit Palace), Defendant in the trial court; and the City of Palestine, Texas (City), Plaintiff in the trial court.

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IN THE

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OCTOBER TERM, 1992

THE TEXAS FRUIT PALACE, INC.,
Petitioner,

v.

THE CITY OF PALESTINE,
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Petition For Writ Of Certiorari
To The Court Of Appeals for the
Twelth Supreme Judicial District of Texas

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

OPINIONS BELOW

The opinions of the District Court of Anderson County, Texas, 3rd Judicial District of Texas are unreported. The Order of possession is attached as Appendix A, Page 1a. The opinion of the Court of Appeals is reported at 842 SW2d 319. The Texas Supreme Court has denied Petitioner's Application for Writ of Error.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

A. Constitutional Provisions.

There are no genuine constitutional issues. Petitioner seeks to involve the due process clauses of the fifth and Fourteenth Amendments.

B. Statutes.

The statutory provisions here involved are Sections 211.008 through 211.011, Texas Local Government Code (formerly Article 1011g, Texas Revised Civil Statutes).

STATEMENT OF THE CASE

This is an eminent domain case. Petitioner's description is not accurate, however. The thirteen-acre property which is the subject of this suit is owned by the Respondent, City of Palestine. It leased the property for a nominal sum to Petitioner, Fruit Palace, to operate an annual county fair. The property cannot, under the terms of the lease, be used for any other purpose and terminates if the Fruit Palace fails to hold an annual fair. Prior to expiration of the lease, the City condemned the remaining leasehold for the dual purpose of; (1) utilizing part for City offices, warehouse, maintenance garage and storage yard; and (2) conveying a portion to the United States Postal Service for a regional postal facility. The City took possession after depositing the appraised price into the registry of the Court, conveyed seven acres to USPS and moved its maintenance, storage and warehouse operations onto the six remaining acres. The only buildings on the thirteen- acre site at the time of the condemnation were located on the six acres

retained by the City. The regional postal facility is now constructed and operating on the seven acres acquired for that purpose.

Petitioner claims a lack of authority by Respondent City to condemn because part of the leasehold estate condemned was conveyed, along with the underlying fee, to USPS; and under the U.S. Constitution, only Congress is specifically authorized to establish post offices.

ARGUMENT

This case does not, as urged by Petitioner, present the question of an attempted exercise of an exclusive Federal power by a political subdivision of a state. Rather, as described by the Courts below, this is a case in which the Respondent exercised its powers partly to benefit itself (by acquiring a maintenance facility) and only partly to assist the United States Postal Service (by conveying part of the leasehold estate condemned, plus part of its underlying fee to USPS). On September 25, 1987, the District Court of Anderson County, Texas found that the award had been paid into the registry of the Court and ordered that the City be given immediate possession of the property. (Appendix A, Page 2a) In pertinent part, the Court's Order of September 25, 1987 stated:

> "It is further ORDERED, ADJUDGED and DECREED that the Clerk of this Court shall issue a Writ of Possession in favor of Plaintiff to effect delivery of the immediate possession of said property to TEXAS FRUIT PALACE, INC., and all persons claiming by, through or under them since the filing of this proceeding, and commanding the sheriff or any constable in the State of Texas to remove

> therefrom all persons and their personalty, if any, situated thereon, to the end that Plaintiff, its authorized agents, employees, servants and independent contractors may at once enter upon said property described in Exhibit "A" *for the purpose of conveying a portion of the property to the United States Government for a regional postal facility and for the location of city offices, city warehouse, city equipment barns, city maintenance garages, city storage yards, city indoor storage buildings, parking facilities, and streets and alleys*, as described in its written Statement and Petition for Condemnation herein." (Emphasis added).

This, then, is actually a "dual-purpose" condemnation which has little to do with the few elderly cases cited by Petitioner as authority on the issue of exclusively Federal purpose condemnation. The evidence showed that approximately six acres and all the buildings of the 13 acre parcel were retained by the City for warehouse and maintenance purposes. These buildings were formerly used by the Petitioner, Fruit Palace, for its principal activity, county fairs. The evidence showed that without these buildings, the county fair could not be conducted.

This is not, then, an attempted condemnation by a state agency for an exclusively Federal purpose.

In Texas, at least, so long as the land taken is for a public use, the amount of land taken is within the discretion of the condemnor. See, e.g., *Luby v. City of Dallas*, 396 SW2d 192 (Tex.Civ.App.-Dallas 1965, writ ref'd n.r.e.), ("surplus" condemnation permitted where remainder would have been unsuitable for any use). Accord: *Atwood v. Willacy County Navigation District*, 271 SW2d 137, 141

(Tex.Civ.App.-San Antonio 1954, writ ref'd n.r.e.), (appeal dismissed 350 US 804 (1955)), ("the property use of the power of eminent domain is exceeded when and only when the municipality condemns land for a *use unconnected with its legitimate purposes*, and simply in order to meet the cost of its proper objectives.") (Emphasis in original.) Thus, the key issue in Texas regarding condemnation is not the amount of land taken by the condemnor, but whether a public use exists for the parcel, and if so, whether the amount of land taken is arbitrary and capricious. *See Massie v. City of Floydada*, 112 SW2d 243 (Tex.Civ.App.-Amarillo 1938, no writ). In view of the fact that there exists a valid and unchallenged state purpose for the five plus acres of the leasehold estate of the Fruit Palace, which contains all the buildings, the acquisition of the leasehold on the remaining seven acres rendered useless should not be subject to challenge.

Respondent City respectfully submits that Petitioner is incorrect in its position that the City has violated the U.S. Constitution by condemning a portion of the leasehold remainder for sale under contract to the U.S. Postal Service.

Texas Local Government Code, §280.001, specifically authorizes the acquisition by a Texas city of land for use by the United States Government. There is no limitation on the uses for which a city may condemn for the purpose of conveying to the Federal Government.

State Court opinions, in a minority of states, pay lip service to a supposed distinction between the right of States and their subdivisions to condemn for what are deemed to be "State" purposes and the right to condemn for "Federal" purposes. No recent case has denied the right of a state or local government to condemn for such so-called "Federal" purposes; this distinction actually arose at a time when the

power of eminent domain of the Federal Government was much in doubt. It appears that, in order to strengthen the authority of the Federal Government to condemn property, a necessity for the exercise of this power solely by the Federal Government was postulated.

By 1875, the right of the Federal Government to condemn land situated within the several states, with or without the consent of the state, had been established. See *Kohl v. United States*, 91 US (1 Otto) 367, 371 (1875). However, before the extent of the constitutional powers of the Federal Government was fully recognized, it was customary, when the Federal Government desired to acquire property within the boundaries of a state, for the taking to be effectuated by the state or one of its political subdivisions under authority of state statute and the property thereafter sold or given to the United States. 26 Am. Jur., *Evidence* §12 n.13 (1966). When this practice (municipal condemnation for the benefit of the Federal Government) was eventually challenged, it was sustained in a majority of states on the ground that the taking was for a valid public use because the benefit derived from the project/condemnation was shared by the state. *See Reddall v. Bryan*, 14 Md. 444 (1859). See also *Burt v. Merchants' Ins. Co.*, 106 Mass. 356 (1871) (state statute authorizing the United States to appropriate a site for a post office and treasury building sustained because purpose was exclusively public.) Thus, the general rule regarding condemnation by a state or political subdivision on behalf of the Federal Government is that the exercise of the power of eminent domain by a state, or under the authority of a state, is not invalidated by the fact that the power is exercised for the benefit or use of the United States. The practice was sustained in some states on the ground that the public work for which the taking was made, although to

be controlled and managed by the United States, was for the use and benefit of the people of the state in that they shared in the benefit.

When, as a matter of fact, the benefit is actually shared by the state, the weight of authority is still to the effect that a state may acquire title to lands on behalf of the United States. 1 Nichols, *Eminent Domain* §2.113 (Sackman rev. ed. 1988). Where for example, the state acquires land for the purpose of granting it to the United States for defense purposes, the state, having an interest in defense, secures attainment of the objective by transferring to the Federal Government the means to perform itsnational defense objectives. It has also been held that when land is taken by the state for a lawful state purpose, the fact that the state intends to turn the land over to the United States to better effectuate the object of the taking is no objection to the validity of the taking. See, e.g., *Richardson v. Cameron County, Texas*, 275 SW2d 709 (Tex.Civ.App.-San Antonio 1955, no writ) (State may permissibly grant county power to condemn property and convey same to the United States for flood control); *Vann v. Cameron County, Texas*, 124 SW2d 167 (Tex.Civ.App.-El Paso 1939, writ dism'd) (Proceeding by county to condemn right of way for flood control and to convey it to the Federal Government was upheld on the basis of statute authorizing cooperation with the United States for flood control). See, Annot., "Power of eminent domain as exercisable by state or one of its political subdivisions for benefit of Federal Government, or by Federal Government exclusively under state authority," 143 A.L.R. 1040, 1042 (1947) (collecting authority). *Accord*, 26 Am.Jr.2d, *Eminent Domain* §12 (1966).

The contrary authority relied upon by the Fruit Palace holds that a state may not exercise its power of eminent domain on behalf of the Federal Government in connection

with purposes which are *exclusively* national in character. See, Nichols, *Eminent Domain*, §2.113 (Sackman rev. ed. 1988). The rationale behind this minority rule is that the power of eminent domain in any sovereign exists only for its own purposes, and the appropriation of lands for exclusively national objectives is not among the ends contemplated in the creation of the state government. *People ex rel. Trombley v. Humphrey*, 23 Mich. 471, 9 Am.Rep. 94 (1871). The Supreme Court of the United States has, in *dictum*, approved this minority rule as based on the "best reasoning." *Kohl v. United States*, 91 US (1 Otto) 367, 373 (1875). Where, however, at least a partial benefit accrues to the state, such condemnation on behalf of the Federal Government has universally been recognized to be valid. *Via v. State Commission*, 9 F.Supp. 556 (W.D.Va.), aff'd, 296 US 549 (1935).

The case of *State v. W. Tin Yan*, 44 Haw. 370, 44, Haw. 464, 355 P2d 25 (1960), is illustrative. Hawaii brought a condemnation proceeding to condemn certain lands for the purpose of donating them to the United States to enlarge the Hawaii National Park. The land owner challenged the condemnation as not being for a public purpose because the condemnation and project were being undertaken on behalf of the United States. In rejecting this argument, the court said:

> "[12] The general rule and majority view that a state may properly exercise its power of eminent domain for the benefit and use of the United States, as set forth in the Annotation, 143 A.L.R. 1040, 1042, has been refined so 'that the state may not exercise its power of eminent domain on behalf of the United States in connection with uses which are exclusively national in character, such as

post offices, custom houses or federal courts, but such condemnation may be had where a partial benefit at least, accrues to the state.' 1 Nichols, *Eminent Domain*, 3d ed., §2.113-[3], p. 111; *Via v. State Commission* On Conservation, etc., D.C.W.D.Va. 1935, 9 F.Supp. 556, affirmed 296 U.S. 549, 56 S.Ct. 245, 80 L.Ed. 388. In the *Via* case, it was held that a taking of land by the state for the purpose of then conveying it to the United States for a national park was a valid taking.

> '... The power [of eminent domain] exists, in any state, for the promotion of the safety, convenience, welfare, and happiness of the people of that state. Conceding that the power of eminent domain must be exercised by a state only in connection with some public function of that state, it must also be conceded that the furtherance of the health, pleasure, and recreational facilities of its people is a function of the state. If this be true, and it undoubtedly is, is the right of the state to perform this function, to accomplish this purpose, to be denied because the manner of its accomplishment involves the cession to the federal government of land which the latter agrees to maintain for this purpose? Is the

> state in the performance of a legitimate function forbidden to accomplish it through such means or agency as it chooses? We think not.

9 F.Supp. 556, at page 562. See also *State v. Oliver*, 162 Tenn. 100, 35 SW2d 396 (1931); *County of San Benito v. Copper Mountain Mining Co.*, 7 Cal.App.2d 82, 45 P.2d 428 (1935).

Public Law 171 states that:

> the tracts of land on the island of Hawaii and on the island of Maui, in the Territory of Hawaii, hereinafter described, shall be perpetually dedicated and set apart as a public part or pleasure ground for the benefit and enjoyment of the people of the United States, ...'

> "This provisions applied to the lands in question by virtue of Section 4, of Public Law 680. It is thus clear that Hawaii and its people, as 'people of the United States,' will obtain benefit and enjoyment from the instant action, which is a proper exercise of the Territory's power of eminent domain for public use.

"Accordingly, the judgment appealed from is affirmed."

The only case Petitioner can find which holds that a state may not condemn lands on behalf of the Federal Government is *People ex rel. Trombley v. Humphrey*, 23 Mich. 471, 9 Am.Rep. 94 (1871). In *Trombley*, the Michigan legislature authorized the Governor to condemn lands for the purpose of conveying them to the Federal Government for erection and maintenance of lighthouses. After the award, the Federal Government refused to accept the property. The landowner sued the state to require it to proceed and the State defended on the ground that it had no authority to condemn because only the Federal Government could do so. The court found that no Public "necessity" existed, because the Federal Government had ample condemnation authority of its own. Further, because the eminent domain power existing in the state was narrowly construed so as to be used only for state purposes, and no other, the court found that the state's exercise of power outside its "sphere of sovereignty" was not among the ends contemplated in the creation of the state government. The Court, although requested, refused to speculate on what outcome might be reached if the state had proclaimed an interest or state purpose, thus leaving open the possibility that the result would be different if there were a dual use.

The United States Supreme Court, in an action reviewing an act of Congress authorizing acquisition of land in Ohio by condemnation for a post office, analyzed the powers of Congress to authorize such procedures and concluded that the state need not give its consent. *Kohl v. United States*, 91 US (1 Otto) 367 (1875). In *dictum*, however, the court reviewed decisions involving state condemnation of lands for the use of the Federal Government including *Trombley*, and found that Trombley was "founded, we think, upon better reason." *Kohl* at 373. The Court stated:

> The proper view of the right of eminent domain seems to be, that it is a right belonging to a sovereignty to take private property for its own public uses, and not for those of another. Beyond that, there exists no necessity; which alone is the foundation of the right. If the United States has the power, it must be complete in itself. It can be neither enlarged nor diminished by a state. Nor can any state prescribe the manner in which it must be exercised. The consent of a state can never be a condition precedent to its enjoyment. Such consent is needed only, if at all, for the transfer of jurisdiction and the right of exclusive legislation after the land shall have been acquired.

Id. at 373-74. Although the Court's comments should be read in the context of their discussion--the powers of the Federal Government--subsequent commentators have seized on these remarks as advancement of the "Trombley doctrine." See, 29A C.J.S., *Eminent Domain* §19 (1965); 1 Nichols, *Eminent Domain* §2.113. The Supreme Court's approbation was dicta at best and was made primarily in support of the proposition directly involved that the Federal Government has the power to condemn land for its own use without the consent of the state. See *Via v. State Commission*, 9 F.Supp. 556 (W.D.Va.), aff 'd, 296 US 549 (1935). It is also worthy of note that the cases finding an absence of a right to condemn all occurred long before the expanded view of the right of eminent domain expressed in *Berman v. Parker*, 343 US 26 (1954).

Various cases have determined whether or not state condemnation is for an *exclusively* Federal purpose. See, e.g., *Via v. State Commission*, 9 F.Supp. 556 (W.D.Va.),

aff'd, 296 US 549 (1935) (state condemnation on behalf of Federal Government for a national public park upheld); *Rockaway Pacific Corporation v. Stotesbury*, 255 F. 345, 352 (2d Cir. 1917) ("the power to condemn sites for forts, lighthouses, post offices, and customs houses is in the United States, and when property is needed for the purposes specified, it should not be condemned by the state, as it is not being taken for public use"). Interestingly, the *Rockaway* court held this principal not applicable where the property was to be taken "for the defense of lives and property of the citizens of the state as well as citizens of the United States." *Id.* Note also the strong dissent arguing that there is no difference between state or federal condemnation as defense of the nation is a public purpose. Thus, there are many decisions which permit state condemnation for non-exclusive federal purposes. See generally, *Schooler v. State*, 175 SW2d 644 (Tex.Civ.App.-El Paso 1943, writ ref 'd w.o.m.) (national park purposes); *Delfield v. Tulsa*, 191 Okla. 541, 131 P.2d 754 (1942) (aircraft manufacturing plant); *Fishel v. City and County of Denver*, 106 Colo. 576, 108 P.2d 236 (1940) (pilot training school); *San Benito County v. Copper Mountain Mining Co.*, 7 Cal.App.2d 82, 45 P.2d 428 (1935) (public park). See generally, Annot., 143 A.L.R. 1040, 1042 (1947).

A question relevant in this case is whether there is authority for a state to condemn for a project which involves both Federal and state purposes, e.g., a government center or complex housing a regional post office and various city offices, or a single building which houses both the Federal District Court and State circuit courts. In other words, may the Federal Government and State Government cooperate in acquiring property by condemnation and thereafter jointly occupy and use the property? The answer is apparently, yes, where the condemnation is undertaken by the Federal Government or the Federal Government "loans" the state its

condemnation powers. See, e.g., *City of Tacoma v. Taxpayers*, 357 US 320 (1958) (city as licensee of Federal Power Commission acquired Federal eminent domain power and capacity to take property to construct a dam); *City of Davenport v. Three-fifths of An Acre of Land*, 147 F.Supp. 794 (S.D.Ill. 1957), aff 'd, 252 F2d 354 (7th Cir 1958) (delegation of Federal eminent domain power to municipality upheld in connection with construction of a bridge over a Federal navigable waterway); *United States v. Certain Parcels of Land*, 209 F.Supp. 483 (S.D.Ill- 1962), aff'd, 314 F2d 825 (7th Cir. 1963), *United States v. Pleasure Diveway & Park Dist.*, 314 F2d 825 (7th Cir. 1963) (condemnation action instituted by Federal Government at request of state upheld despite fact that state could not have condemned property in its own name); *Eden Memorial Park Association v. Department of Public Works*, 59 Cal.2d 412, 29 Cal.Rptr. 790, 380 P.2d 390 (1963) (condemnation for federal highway upheld despite state law prohibiting condemnation of cemetery property for highway purposes).

It is universally established that private property may constitutionally be taken by eminent domain only for a public use. *Hawaii Housing Authority v. Midkiff*, 467 US 229 (1984); *Dyer v. Texas Electric Service Co.*, 680 SW2d 883, 884-85 (Tex-App.-El Paso 1984, writ ref 'd n.r.e.); *Tenngasco Gas Gathering Co. v. Fischer*, 653 SW2d 469 (Tex.Civ.App.-Corpus Christi 1983, writ ref 'd n.r.e.). Although "public use" is incapable of a precise and comprehensive definition, a presumption exists that a use is public if the legislature has declared it to be such, and should be treated with great consideration from the judiciary. *Housing Authority v. Higginbotham*, 135 Tex. 158, 143 SW2d 79, 85 (1940); *Hawaii Housing Authority v. Midkiff*, 467 US 229 at 244 ("if a legislature, state or federal, determines there is a substantial reason for an exercise of taking power, courts must defer to its determination that the taking will serve a

public use.") See also *Berman v. Parker*, 348 US 26, 32 (1954) ("when the legislature speaks, the public purpose has been declared in terms "well-nigh conclusive.")"

In many instances, state constitutions extend the object of eminent domain to what would be considered a private use, by declaring it to be of public importance. See 21A Nichols, *Eminent Domain* §7.15 (1987); *Texas* Constitution Article XI, §7 ("Irrigation of agricultural lands is hereby declared to be a public purpose.") Further, many states delegate the power of eminent domain to political subdivisions or agencies, public service corporation, and/or private corporations. *Atwood v. Willacy County Navigation District*, 271 SW2d 137 (Tex.Civ.App.-San Antonio 1954, writ ref'd n.r.e.), appeal dismissed 350 US 804 (1955) (judicial deference to determination that acquisition of land around public facility was for a public use and purpose); *West V. Whitehead*, 238 SW 976 (Tex.Civ.App.-San Antonio 1922, writ ref'd) (upholding a private railroad's power to exercise eminent domain). See 21A Nichols, *Eminent Domain* §7.18-19 (1987). Clearly, if judicial review is narrow where condemnation results in private use of property, at least the same deference must be allowed where a Federal "public use" results from state condemnation. See *Davis v. City of Lubbock*, 160 Tex. 38, 326 SW2d 699 (1959). Unlike *Trombley*, the United States Postal Service in this case is asserting its desire to have the property; indeed it already has it.

Petitioner claims to be affronted by USPS' willingness to allow the City to get it land; it is difficult to follow the floodgates alarms raised by Petitioner over this supposed constitutional issue.

Even if the acquisition of land for a post office is deemed to fall within the purview of a solely *federal use*, the activity should nevertheless be determined to advance or serve a valid *state purpose* because of the obvious local benefit derived from such activity. "It is undoubtedly the law that land can be acquired by eminent domain for the site of a . . . post office . . . or for similar structures, in which the affairs of the government are administered." 21A Nichols, *Eminent Domain* §7.20 (1987) (citing *Kohl v. United States*, 91 US (1 Otto) 367 (1875)). See also *Burt v. Merchants' Ins. Co.*, 106 Mass. 356, 363 (1871) ("No intelligent person can suppose that the state is not interested in the establishment of lighthouses, navy-yards and arsenals within its limits, quite as much as the United States. And as to a post office in the City of Boston, the people of that city are peculiarly interested in it. The whole Commonwealth is interested in it; and it is established by the United States for a purpose *exclusively public. It is difficult to conceive of a more proper case for the exercise of the rights of eminent domain.*" (Emphasis added).

The above discussion argues the existence of a state public purpose even where utilized to acquire land for exclusive Federal use. Where, as here, there is also a legitimate state use - warehouses, etc., there is simply no authority for invalidation of the taking.

CONCLUSION

The Respondent, City of Palestine, as a Texas City, was empowered under §251.001, Texas Local Government Code, to condemn Petitioner's leasehold estate remainder for use for City equipment barns, warehouses and offices and under §280.001 et seq., Texas Local Government Code for conveyance of a part hereof to the U.S. Government for use for a regional postal facility. Such uses are all public uses and the Court of Appeals did not err in affirming the trial court's ruling to this effect.

Respectfully Submitted,

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APPENDIX A

FILED FOR RECORD
_____ O'clock ___M.
SEP 25 1987
LULU F. NATION
DISTRICT CLERK, ANDERSON COUNTY, TEXAS
BY _____ DEPUTY

CITY OF PALESTINE, TEXAS		PROCEEDINGS IN EMINENT DOMAIN
VS.	*	THIRD JUDICIAL
	*	DISTRICT COURT
TEXAS FRUIT	*	ANDERSON COUNTY,
PALACE, INC.	*	TEXAS

ORDER

The foregoing Motion for Writ of Possession, having been presented to the Court, and the Court having heard and considered the same and the evidence and argument of counsel in connection therewith, and it appearing to the Court that by their written Award filed herein the Special Commissioners duly appointed by this Court having duly qualified awarded to Defendant, TEXAS FRUIT PALACE, INC., the amount of One Hundred Sixty Thousand and NO/100 ($160,000.00) Dollars as damages by reason of the condemnation herein, that Plaintiff has paid all costs awarded against it, has deposited into the registry of this Court, subject to the order of said Defendant, the amount of damages awarded and adjudged against it by said Special Commissioners, in accordance with the provisions of Section 21.021, Vernon's Texas Codes Annotated, as amended, and that Plaintiff is entitled to immediate possession of that

certain property described in Exhibit "A" attached hereto and made a part hereof for all purposes, pending the final determination of this proceeding.

It is accordingly ORDERED, ADJUDGED and DECREED that the Clerk of this Court shall issue a Writ of Possession in favor of Plaintiff to effect delivery of the immediate possession of said property to said Plaintiff as against said Defendant, TEXAS FRUIT PALACE, INC., and all persons claiming by, through or under them since the filing of this proceeding, and commanding the sheriff or any constable in the State of Texas to remove therefrom all persons and their personalty, if any, situated thereon, to the end that Plaintiff, its authorized agents, employees, servants and independent contractors may at once enter upon said property described in Exhibit "A" for the purpose of conveying a portion of the property to the United States Government for a regional postal facility and for the location of city offices, city warehouses, city equipment barns, city maintenance garages, city storage yards, city indoor storage buildings, parking facilities, and streets and alleys, as described in its written Statement and Petition for Condemnation herein.

It is further ORDERED, ADJUDGED and DECREED that the Clerk, if said One Hundred Sixty Thousand and No/100 ($160,000.00) Dollars, is not withdrawn by Defendant, Condemnee, TEXAS FRUIT PALACE, INC., on or before 10 days from the date of this Order, that the Clerk deposit the One Hundred Sixty Thousand and No/100 ($160,000.00) Dollars into interest bearing accounts in state or national banks in Texas so that all funds will be F.D.I.C. insured and that the Clerk pay the interest earned on such amounts to Plaintiff, Condemnor, CITY OF PALESTINE, as interest accrues.

SIGNED and ENTERED this 25th day of September, A.D., 1987.

/s/ Sam Bournias
Judge of the 87th Judicial
District Court of
Anderson County, Texas

APPROVED AS TO FORM:

/s/ Charles W. Nichols
Attorney for Plaintiff,
CITY OF PALESTINE

Attorney for Defendant,
TEXAS FRUIT PALACE, INC.

EXHIBIT "A"

Description of "The Fair Grounds"

BEING 13.034 acres in and out of the S.G. Wells League, A-65, and the Jacob Snively, A-63, Anderson County, Texas, and being portions of a 9.53 acre tract described in a Sheriff's Deed No. 25575 to the City of Palestine in deed dated March 2, 1921, and recorded in Volume 135, Page 467, and a 6.92 acre tract conveyed by Thomas L. Camp et al to the City of Palestine in deed dated March 10, 1936 and recorded in Volume 267, Page 91, both of the Deed Records of Anderson County, Texas, said 13.034 acre tract is more particularly described by metes and bounds as follows, to-wit:

BEGINNING at an iron rod set at the southwest corner of the 9.53 acre tract referred to above, same being the intersection of the north margin of West Coronaca Street and the east line of a 12' wide alley;

THENCE North 11°32'37" West with the east line of said 12' wide alley, same being the west line of 9.53 acre tract, a distance of 198.05 feet to an iron rod set for corner;

THENCE North 82°28'27" East along a fence a distance of 215.16 feet to an iron rod set for corner;

THENCE North 45°28'51" East continuing with said fence 138.78 feet to an iron rod set for corner;

THENCE North 4°53'23" East along said fence a distance of 179.71 feet to an iron rod set for corner;

THENCE North 16°08'18" West continuing with said fence a distance of 159.88 feet to an iron rod set in the south

margin of Kickapoo Street, same being the north line of the 9.53 acre tract referred to above;

THENCE North 77°44'07" East with the south margin of Kickapoo Street and the north line of the 9.53 care tract a distance of 272.61 feet to an iron rod set for corner;

THENCE South 10°51'43" East a distance of 68.72 feet to an iron rod set for corner at the northwest corner of the 6.92 acre tract referred to above;

THENCE North 75°04'31" East with the north line of said 6.92 acre tract a distance of 499.28 feet to its intersection with the west right of way line of State Highway No. 155;

THENCE in a southerly direction with the east right of way line of State Highway No. 155 the following courses: South 9°00'20" West, 331.76 feet; South 0°27'05" East, 205.66 feet; and South 8°39'23" East, 250.75 feet to an iron rod set for corner in the south line of the 6.92 acre tract;

THENCE South 82°39'50" West with said south line of 9.62 acre tract a distance of 342.85 feet to an iron rod set in the west margin of North Cedar Street;

THENCE North 12°59'21" West with the west margin of North Cedar Street a distance of 60.17 feet to an iron rod set for corner, same being at the intersection of the west margin of North Cedar Street and the south margin of West Coronaca Street;

THENCE South 85°05'00" West with the south margin of West Coronaca Street a distance of 428.63 feet to an iron rod set for corner and bearing North 85°05'00" East, a distance of 50.00 feet from the intersection of the south margin of West Coronaca Street with the east margin of North Laura Street;

THENCE North 4°55'00" West a distance of 50.00 feet to an iron rod set in the north margin of West Coronaca Street, same being the south line of the 9.53 acre tract referred to above;

THENCE South 85°05'00" West with the north line of the 9.53 acre tract, same being the north line of West Coronaca Street a distance of 208.58 feet to the PLACE OF THE BEGINNING, and containing 13.034 acres.